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Attorneys for the United States

FILED
MAR 2 4 2015
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTY

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

PAULINO HERRERA-HERNANDEZ,

Defendant

Case No.: 14CR3571-LAB

STIPULATION OF FACTS AND TESTIMONY FOR BENCH TRIAL

IT IS HEREBY AGREED, by and between the Plaintiff, UNITED STATES OF AMERICA, by and through its counsel, Laura E. Duffy, United States Attorney, and Benjamin J. Katz, Assistant United States Attorney, and Defendant, PAULINO HERRERA-HERNANDEZ ("Defendant), with the advice and consent of Amrutha Jindal, Esq., counsel for Defendant, that the following would be uncontroverted testimony at trial:

1. United States Border Patrol Agent Justin Clare would testify that:

   a. On November 15, 2014, at approximately 2:00 a.m., he was performing his duties when he responded to a seismic intrusion device and began searching for suspected illegal aliens in the area of the device.

b. At approximately 3:15 a.m., he observed Defendant and another individual attempting to hide themselves in some brush approximately five miles east of the Otay Mesa, California, Port of Entry, and eight miles north of the United States/Mexico Border.

c. He placed Defendant under arrest and Defendant was transported to the Brown Field Border Patrol Station for processing.

2. United States Border Patrol Agent Joseph Moore, A-File Custodian, would testify that:

a. Defendant is assigned A-number: 89 851 632

b. On June 24, 2008, Defendant was served with a Notice and Order of Expedited Removal and removed to Mexico consistent with that order, as evidenced by Government Exhibit 1.

c. On February 23, 2009, Defendant was served with a Notice and Order of Expedited Removal, as evidenced by Government Exhibit 2.

d. On February 24, 2009, Defendant was removed to Mexico, as evidenced by Government Exhibit 2.

e. On May 17, 2011, Defendant, after illegally reentering the United States, had his February 23, 2009 removal order reinstated by an immigration official. Specifically, a Warrant of Deportation (Form I-205), which contained Defendant's photo, name, and A-number, was executed and Defendant was subsequently physically excluded, deported, and removed from the United States to Mexico through the San Ysidro, California, Port of Entry, as Evidenced by Government Exhibit 3.

f. Based on computerized and paper records checks performed by Agent Moore using Defendant's name and A-file number, 89 851 632:

i. He discovered no evidence that Defendant had ever applied for or received permission to reapply for admission into the United States after he was deported on June 24, 2008, February 23, 2009, and May 17, 2011.

ii. He did not find any evidence that Defendant reapplied for admission to the United States prior to illegally re-entering on November 15, 2014.

3. Immigration Customs Enforcement Agent Guillermo Reza would testify that:

a. On May 18, 2011 he executed the Warrant of Deportation (I-205) evidenced by Government Exhibit 3 and removed Defendant to Mexico.

b. He executed the "Departure witnessed" line on Form I-205 after he witnessed Defendant physically leave the United States and enter Mexico.

4. Fingerprint Expert David Beers would testify that:

a. He took the fingerprints of the Defendant on February 20, 2015, as evidenced by Government Exhibit 4.

b. He compared these fingerprints to fingerprints contained on the following documents from the Defendant's A-file, and in his expert opinion, they all belong to the same person, namely Defendant:

   i. An inked fingerprint card bearing Defendant's name and A-number dated November 15, 2014, as evidenced by Government Exhibit 5.

   ii. A fingerprint on form I-205, Warrant of Removal/Deportation bearing Defendant's name and A-number, dated March 9, 2011, as evidenced by Government Exhibit 6.

   iii. A fingerprint on form I-296, Notice to Alien Ordered Removed/Departure Verification, bearing Defendant's name and A-number, dated February 23, 2009 (Government Exhibit 2).

   iv. A fingerprint on form I-296, Notice to Alien Ordered Removed/Departure Verification, bearing Defendant's name and A-number, dated June 24, 2008 (Government Exhibit 1).

5. Mr. Herrera-Hernandez is not a citizen of the United States.

6. Mr. Herrera-Hernandez is a citizen and national of Mexico.

7. After his removal on or about May 17, 2011, Mr. Herrera-Hernandez voluntarily entered the United States.

8. At the time of his entry, Mr. Herrera-Hernandez knew he was entering the United States.

IT IS FURTHER STIPULATED AND AGREED by the parties that Government Exhibits 1, 2, 3, 4, 5, and 6 are admissible as substantive evidence at trial.

SO STIPULATED AND AGREED.

DATED: 3/24/15

BENJAMIN J. KATZ
Assistant United States Attorney

DATED: 3/24/15

AMRUTHA JINDAL
Counsel to Defendant

DATED: 3/24/15

X
PAULINO HERRERA-HERNANDEZ
Defendant

GOVERNMENT EXHIBIT
CASE NO. 14cr3571-LAB
EXHIBIT NO. 1

meland Security

Notice and Order of Expedited Removal

DETERMINATION OF INADMISSIBILITY

Event Number :SYS0806001895

File No: A089 851 632

Date: June 24, 2008

In the Matter of: PAULINO HERRERA HERNANDEZ

Pursuant to section 235(b)(1) of the Immigration and Nationality Act (Act), (8 U.S.C. 1225(b)(1)), the Department of Homeland Security has determined that you are inadmissible to the United States under section(s) 212(a) ☐ (6)(C)(i); ☐ (6)(C)(ii); ☒ (7)(A)(i)(I); ☐ (7)(A)(i)(II); ☐ (7)(B)(i)(I); and/or ☐ (7)(B)(i)(II) of the Act, as amended, and therefore are subject to removal, in that:

1) On or about June 24, 2008, you attempted to elude inspection to enter the United States, via the San Ysidro, California Port of Entry.
1) You are a citizen and national of Mexico.
2) You have no legal right to enter, pass through, or remain in the United States.
3) You are not in possession of a valid entry document as required by the Act.

RODRIGO LOPEZ
CBP OFFICER
Name and title of immigration officer (Print)

Signature of immigration officer

ORDER OF REMOVAL UNDER SECTION 235(b)(1) OF THE ACT

Based upon the determination set forth above and evidence presented during inspection or examination pursuant to section 235 of the Act, and by the authority contained in section 235(b)(1) of the Act, you are found to be inadmissible as charged and ordered removed from the United States.

SCOTT NEBEKER
SUPERVISORY CBP OFFICER
Name and title of immigration officer (Print)

Signature of immigration officer

L. DELOATCH
CBP BRANCH CHIEF
Name and title of supervisor (Print)

Lee DeLoatch
Signature of supervisor, if available

☐ Check here if supervisory concurrence was obtained by telephone or other means (no supervisor on duty).

CERTIFICATE OF SERVICE

I personally served the original of this notice upon the above-named person on 6/24/08 (Date)

Signature of immigration officer

Form I-860 (Rev. 08/01/07)

FINS: 1070527875

U.S. Department of Homeland Security — Notice to Alien Ordered Removed/Departure Verification

File No: [redacted]

Date: 06/24/2008

Alien's full name: Paulino HERRERA HERNANDEZ

You have been found to be inadmissible to the United States under the provisions of section 212(a) of the Immigration and Nationality Act (Act) or deportable under the provisions of section 237 of the Act as a Visa Waiver Pilot Program violator. In accordance with the provisions of section 212(a)(9) of the Act, you are prohibited from entering, attempting to enter, or being in the United States

- [x] for a period of 5 years from the date of your departure from the United States as a consequence of your having been found inadmissible as an arriving alien in proceedings under section 235(b)(1) or 240 of the Act.
- [ ] for a period of 10 years from the date of your departure from the United States as a consequence of your having been ordered removed in proceedings under any section of the Act other than section 235(b)(1) or 240, or of your having been ordered excluded under section 236 of the Act in proceedings commenced prior to April 1, 1997.
- [ ] for a period of 20 years from the date of your departure from the United States as a consequence of your having been found inadmissible and of your having been previously excluded, deported, or removed from the United States.
- [ ] at any time because in addition to having been found inadmissible, you have been convicted of a crime designated as an aggravated felony.

After your deportation or removal has been effected, if you desire to reenter the United States within the period during which you are barred, you must request and obtain permission from the Secretary of Homeland Security to reapply for admission to the United States. You must obtain such permission before commencing your travel to the United States. Application forms for requesting such permission may be obtained by contacting any United States Consulate or office of the United States Department of Homeland Security.

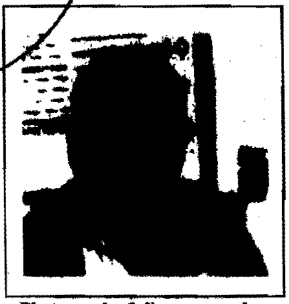
WARNING: Title 8 United States Code, Section 1326 provides that it is a crime for an alien who has been removed from the United States to enter, attempt to enter, or be found in the United States without the Secretary of Homeland Security's express consent. Any alien who violates this section of law is subject to prosecution for a felony. Depending on the circumstances of the removal, conviction could result in a sentence of imprisonment for a period of from 2 to 20 years and/or a fine of up to $250,000.

LOPEZ, Rodrigo	CBP OFFICER	SYS
(Signature of officer serving warning)	(Title of officer)	(Location of DHS office)

Verification of Removal

(Complete this section for file copy only)

Departure date	Port of departure	Manner of departure
06/24/2008	SAN YSIDRO	AFOOT
Signature of verifying officer	Title of Officer	



Photograph of alien removed

Right index fingerprint of alien removed

0853
2-2015
K12

(Signature of alien whose fingerprint and photograph appear above)

(Signature of official taking fingerprint)

Form I-296 (08/01/07)

GOVERNMENT EXHIBIT
CASE NO. 14cr3571-CAB
EXHIBIT NO. 2

[H]omeland Security

Notice and Order of Expedited Removal

DETERMINATION OF INADMISSIBILITY

Event No: CHU0902000452

File No: A089 851 632

Date: February 23, 2009

In the Matter of: PAULINO HERRERA-HERNANDEZ

Pursuant to section 235(b)(1) of the Immigration and Nationality Act (Act), (8 U.S.C. 1225(b)(1)), the Department of Homeland Security has determined that you are inadmissible to the United States under section(s) 212(a) ☐ (6)(C)(i); ☐ (6)(C)(ii); ☒ (7)(A)(i)(I); ☐ (7)(A)(i)(II); ☐ (7)(B)(i)(I); and/or ☐ (7)(B)(i)(II) of the Act, as amended, and therefore are subject to removal, in that:

1. You are an immigrant not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Immigration and Nationality Act. You are a citizen and National Of Mexico, and on February 21, 2009 you illegaly entered the United States at/near Otay Mesa, Califonia, and you were not inspected by an Immigration Officer.

RIGOBERTO CEJA-HUANTE
BORDER PATROL AGENT
Name and title of immigration officer (Print)

Signature of immigration officer

ORDER OF REMOVAL UNDER SECTION 235(b)(1) OF THE ACT

Based upon the determination set forth above and evidence presented during inspection or examination pursuant to section 235 of the Act, and by the authority contained in section 235(b)(1) of the Act, you are found to be inadmissible as charged and ordered removed from the United States.

RIGOBERTO CEJA-HUANTE
BORDER PATROL AGENT
Name and title of immigration officer (Print)

Signature of immigration officer

RYAN YAMASAKI
ACTING PATROL AGENT IN CHARGE
Name and title of supervisor (Print)

Signature of supervisor, if available

☐ Check here if supervisory concurrence was obtained by telephone or other means (no supervisor on duty).

CERTIFICATE OF SERVICE

I personally served the original of this notice upon the above-named person on 2/23/09
(Date)

Signature of immigration officer

Form I-860 (Rev. 08/01/07)

FINS #:1070527875

U.S. Department of Homeland Security

Notice to Alien Ordered Removed/Departure Verification

Event No: CHU0902000452
File No: 089 851 632

Date: 02/23/2009

Alien's full name: PAULINO HERRERA-HERNANDEZ

You have been found to be inadmissible to the United States under the provisions of section 212(a) of the Immigration and Nationality Act (Act) or deportable under the provisions of section 237 of the Act as a Visa Waiver Pilot Program violator. In accordance with the provisions of section 212(a)(9) of the Act, you are prohibited from entering, attempting to enter, or being in the United States

- ☐ for a period of 5 years from the date of your departure from the United States as a consequence of your having been found inadmissible as an arriving alien in proceedings under section 235(b)(1) or 240 of the Act.
- ☐ for a period of 10 years from the date of your departure from the United States as a consequence of your having been ordered removed in proceedings under any section of the Act other than section 235(b)(1) or 240, or of your having been ordered excluded under section 236 of the Act in proceedings commenced prior to April 1, 1997.
- ☒ for a period of 20 years from the date of your departure from the United States as a consequence of your having been found Inadmissible and of your having been previously excluded, deported, or removed from the United States.
- ☐ at any time because in addition to having been found inadmissible, you have been convicted of a crime designated as an aggravated felony.

After your deportation or removal has been effected, if you desire to reenter the United States within the period during which you are barred, you must request and obtain permission from the Secretary of Homeland Security to reapply for admission to the United States. You must obtain such permission before commencing your travel to the United States. Application forms for requesting such permission may be obtained by contacting any United States Consulate or office of the United States Department of Homeland Security.

WARNING: Title 8 United States Code, Section 1326 provides that it is a crime for an alien who has been removed from the United States to enter, attempt to enter, or be found in the United States without the Secretary of Homeland Security's express consent. Any alien who violates this section of law is subject to prosecution for a felony. Depending on the circumstances of the removal, conviction could result in a sentence of imprisonment for a period of from 2 to 20 years and/or a fine of up to $250,000.

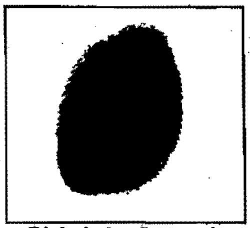
RIGOBERTO CEJA-HUANTE [signature]	BORDER PATROL AGENT	CHU
(Signature of officer serving warning)	(Title of officer)	(Location of DHS office)

Verification of Removal

(Complete this section for file copy only)

Departure date	Port of departure	Manner of departure
2/23/09	San Ysidro, CA	On Foot
Signature of verifying officer: [signature]	Title of Officer: Border Patrol Agent	

Photograph of alien removed



Right index fingerprint of alien removed

DSS 2-20-15 K11

[signature] (Signature of alien whose fingerprint and photograph appear above)

[signature] (Signature of official taking fingerprint)

Form I-296 (08/01/07) N

U.S. Department of Homeland Security

Warrant of Removal/Deportation

File No: A089851632
Event No: BKI1105000603
Date: May 17, 2011

To any immigration officer of the United States Department of Homeland Security:

Paulino HERRERA-Hernandez
(Full name of alien)

who entered the United States at Unknown Place (Place of entry) on Unknown date (Date of entry)

is subject to removal/deportation from the United States, based upon a final order by:

- ☒ an immigration judge in exclusion, deportation, or removal proceedings
- ☐ a designated official
- ☐ the Board of Immigration Appeals
- ☐ a United States District or Magistrate Court Judge

and pursuant to the following provisions of the Immigration and Nationality Act:
241(a)(5)

I, the undersigned officer of the United States, by virtue of the power and authority vested in the Secretary of Homeland Security under the laws of the United States and by his or her direction, command you to take into custody and remove from the United States the above-named alien, pursant to law, at the expense of:
Salaries and Expenses, Department of Homeland Security 2011.

GOVERNMENT EXHIBIT
CASE NO. 14cc3571-LAB
EXHIBIT NO. 3

IDENTED
107052 7875
DATE: 5/18/2011
OFFICER ID: 8023

BRI... BONNAR
(Signature of immigration officer)

DFOD
(Title of immigration officer)

May 17, 2011, Bakersfield, CA
(Date and office location)

Please Return Executed I-205/94 to
ICE DRO
800 Truxtun Ave
Bakersfield, CA 93301
FEDEX Account# 22?009053

Form I-205 (Rev. 08/01/07)

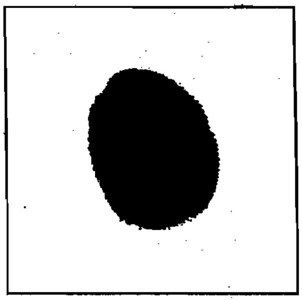
To be completed by immigration officer executing the warrant:
Name of alien being removed:

Paulino HERRERA-Hernandez

DEPORTED TO MEXICO VIA SYS POE AFOOT MAY 18 2011

Port, date, and manner of removal:

2-20-15
K8



Photograph of alien removed

Right index fingerprint of alien removed

(Signature of alien being fingerprinted)

IEA

(Signature and title of immigration officer taking print)

Departure witnessed by: 762186

(Signature and title of immigration officer)

If actual departure is not witnessed, fully identify source or means of verification of departure:

If self-removal (self-deportation), pursuant to 8 CFR 241.7, check here. ☐

Departure Verified by: ______________________

(Signature and title of immigration officer)

GOVERNMENT EXHIBIT

CASE NO. 14cr3571-LAB

EXHIBIT NO. 4

LEAVE BLANK

CRIMINAL

(STAPLE HERE)

LEAVE BLANK

STATE USAGE

NFF SECOND SUBMISSION ☐ APPROXIMATE CLASS ☐ AMPUTATION ☐ SCAR

E USAGE

LAST NAME, FIRST NAME, MIDDLE NAME, SUFFIX

ATURE OF PERSON FINGERPRINTED

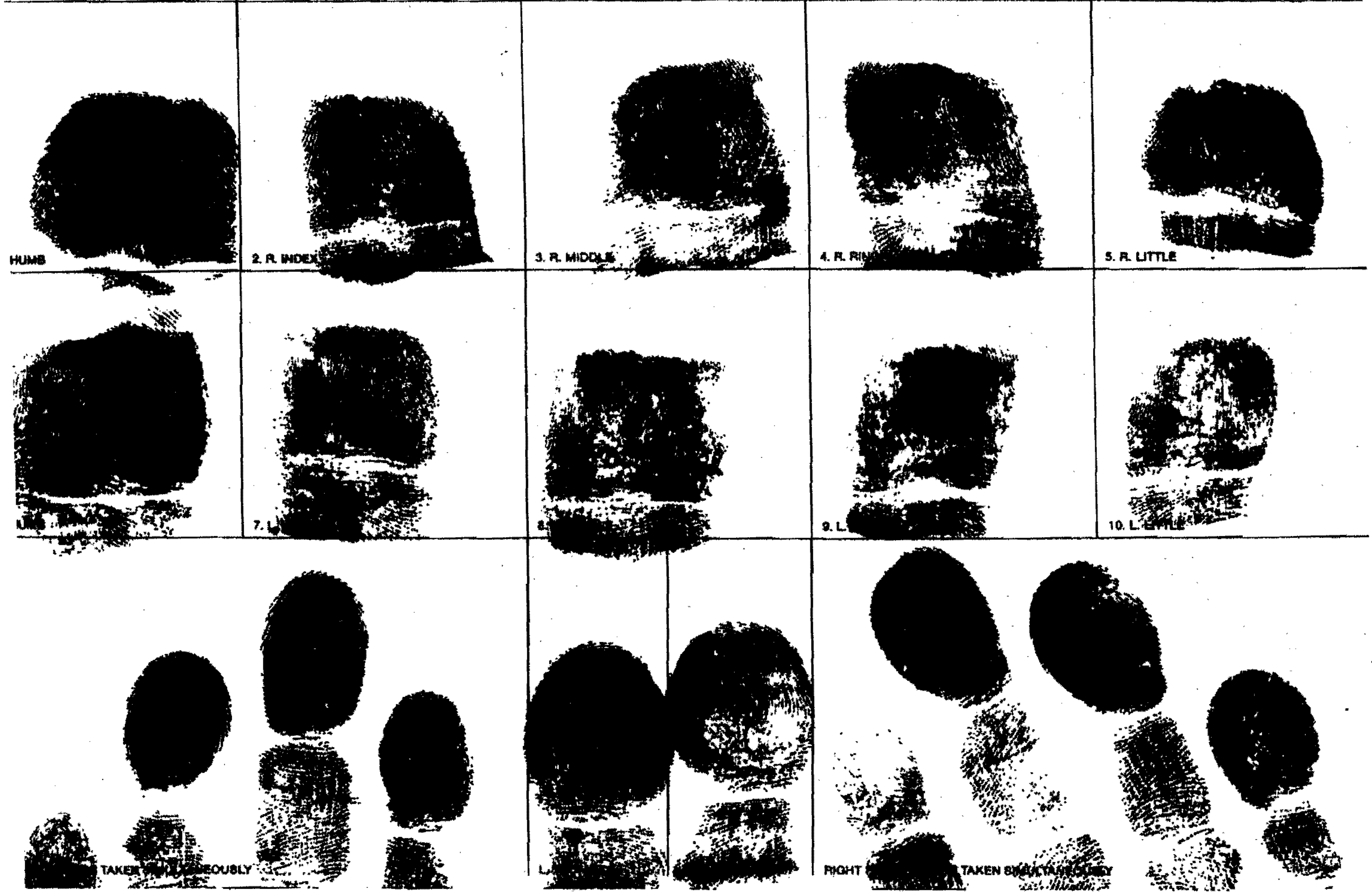
SOCIAL SECURITY NO.

LEAVE BLANK

ES/MAIDEN
NAME, FIRST NAME, MIDDLE NAME, SUFFIX

DSS
2-20-15

).	STATE IDENTIFICATION NO.	DATE OF BIRTH MM DD YY	SEX	RACE	HEIGHT	WEIGHT	EYES	HAIR



HUMB
2. R. INDEX
3. R. MIDDLE
4. R. RI
5. R. LITTLE
7. L
9. L.
10. L. LITTLE
TAKEN SIMULTANEOUSLY
RIGHT
TAKEN SIMULTANEOUSLY

GOVERNMENT EXHIBIT

CASE NO. 14cr357A-LAR

EXHIBIT NO. 5

LEAVE BLANK | CRIMINAL | (STAPLE HERE) | LEAVE BLANK

[redacted]

STATE USAGE

UFF SECOND SUBMISSION | APPROXIMATE CLASS | AMPUTATION | SCAR

FD-249 (Rev. 3-1-10)

SAGE

LAST NAME, FIRST NAME, MIDDLE NAME, SUFFIX

HERRERA-HERNANDEZ, PAULINO

...URE OF PERSON FINGERPRINTED

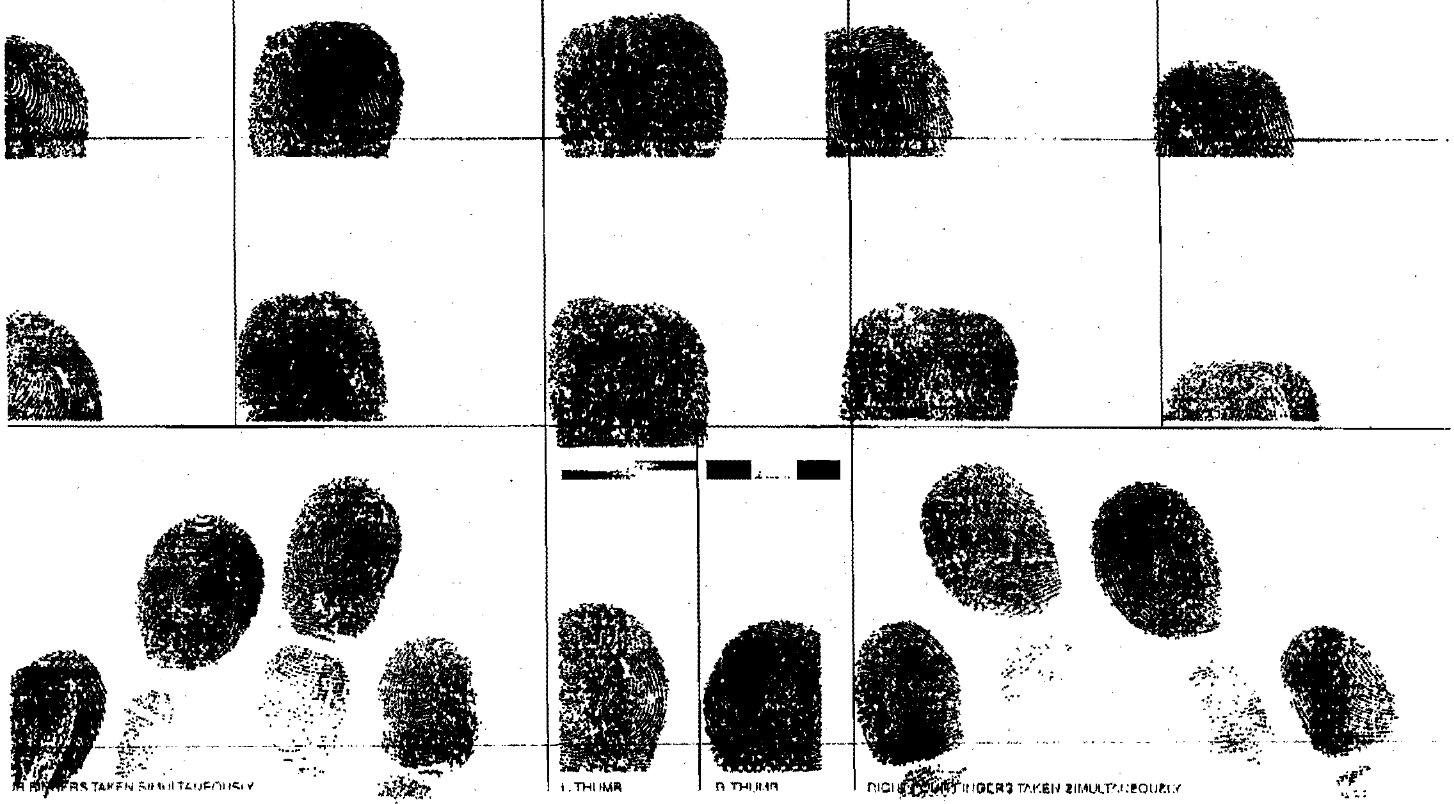
SOCIAL SECURITY NO.

LEAVE BLANK

ALIASES/MAIDEN
...ME, FIRST NAME, MIDDLE NAME, SUFFIX

OSB
2-20-15
K3

	STATE IDENTIFICATION NO.	DATE OF BIRTH MM DD YY	SEX	RACE	HEIGHT	WEIGHT	EYES	HAIR
...977AD7		03/10/1972	M	W	411	110	BRO	BLK



[redacted]

...R FINGERS TAKEN SIMULTANEOUSLY | L. THUMB | R. THUMB | RIGHT FOUR FINGERS TAKEN SIMULTANEOUSLY

U.S. Department of Homeland Security

Warrant of Removal/Deportation

File No: A089 851 632
Event No: CHU1103000098
Date: March 09, 2011

To any immigration officer of the United States Department of Homeland Security:

PAULINO HERRERA-HERNANDEZ
(Full name of alien)

who entered the United States at OTAY MESA, CALIFORNIA (Place of entry) on March 07, 2011 (Date of entry)

is subject to removal/deportation from the United States, based upon a final order by:

- ☐ an immigration judge in exclusion, deportation, or removal proceedings
- ☒ a designated official
- ☐ the Board of Immigration Appeals
- ☐ a United States District or Magistrate Court Judge

and pursuant to the following provisions of the Immigration and Nationality Act:
Section 241(a)(5) of the INA.

I, the undersigned officer of the United States, by virtue of the power and authority vested in the Secretary of Homeland Security under the laws of the United States and by his or her direction, command you to take into custody and remove from the United States the above-named alien, pursuant to law, at the expense of:
THE DEPARTMENT OF HOMELAND SECURITY 2011.

GOVERNMENT EXHIBIT
CASE NO. 14cr3571-LAB
EXHIBIT NO. 6

(Signature of immigration officer)

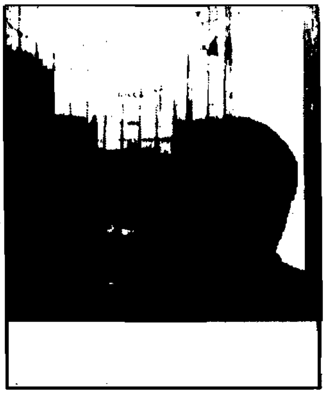
ACTING PATROL AGENT IN CHARGE
(Title of immigration officer)

March 8, 2011 SAN DIEGO, CALIFORNIA
(Date and office location)

To be completed by immigration officer executing the warrant:
Name of alien being removed:

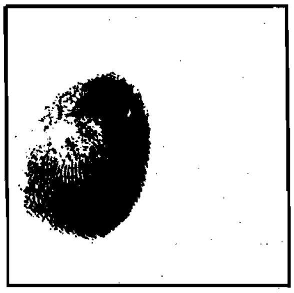
PAULINO HERRERA-HERNANDEZ

Port, date, and manner of removal: ______________________



Photograph of alien removed

0855
2-20-15
K10



Right index fingerprint of alien removed

(Signature of alien being fingerprinted)

LUIS A. PEREZ JR.
BORDER PATROL AGENT

(Signature and title of immigration officer taking print)

Departure witnessed by: ______________________
(Signature and title of immigration officer)

If actual departure is not witnessed, fully identify source or means of verification of departure:

____

If self-removal (self-deportation), pursuant to 8 CFR 241.7, check here. ☐

Departure Verified by: ______________________
(Signature and title of immigration officer)

Form I-205 (Rev. 08/01/07) N